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ex rel. Arizona Department of Revenue

IN THE UNITED STATES BANKRUPTCY COURT
IN AND FOR THE DISTRICT OF ARIZONA

In re:

Chapter 13

KUSHUNE DENISE ALLEN,
SSN: XXX-XX-8761

Case No. 2:20-bk-01580-EPB

Debtor.

OBJECTION TO CONFIRMATION OF ORIGINAL CHAPTER 13 PLAN

Docket No. 21

The State of Arizona *ex rel.* Arizona Department of Revenue (“Department”) objects to the *Original Chapter 13 Plan* (“Plan”) filed by Kushune Denise Allen (“Debtor”) on March 3, 2020 as follows:

1. The Department is the agency empowered and entitled to enforce Arizona tax laws and regulations, including but not limited to individual income taxes, transaction privilege taxes (“TPT”) and withholding taxes (“WTH”). A.R.S. §§ 43-208; 42-1004 *et seq.*; 43-101 *et seq.*
 2. The Debtor is an individual residing in the State of Arizona and upon information and

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1 belief is required to file and pay certain tax liabilities to the Department, including individual
2 income taxes. *See A.R.S. §§ 43-301, 43-501.*

3 3. The Department filed a proof of claim establishing a priority claim in the amount of
4 \$5,208.00. A true and accurate copy of the Department's *Original Proof of Claim* ("Claim")
5 dated February 18, 2020 is No. 1-1 on the Court's Claims Register. In addition, the
6 Department's Claim indicates that the Debtor has failed to file the tax return indicated below
7 ("Outstanding Return"):

<u>Income</u>	2011
<u>TPT</u>	Not Applicable
<u>WTH</u>	Not Applicable

15 4. As indicated in the Department's Claim, the Debtor has failed to file all tax returns.
16 Moreover, the Plan cannot be confirmed until such time that the Debtor files the Outstanding
17 Return. Signed, dated, and non-redacted copies of the returns with all federal form W-2s and
18 Federal Schedule A, as applicable, may be sent to Richard.Graves@azag.gov, which the
19 Department will accept as filed on the date that they are received by the Attorney General's
20 Office.

22 5. The Department's Claim is entitled to priority treatment pursuant to 11 U.S.C.
23 § 507(a)(8)(A). The Plan is required to provide payment in full of all priority claims, unless the
24 claimant agrees otherwise. 11 U.S.C. § 1322(a)(2). Here, the Department has not agreed to
25 different treatment than what Section 1322 requires and the Plan does not provide for the full
26 payment of the Department's priority claim. Therefore, the Plan cannot be confirmed. 11

U.S.C. § 1325(a)(1).

6. The Department's Claim consists of liabilities that were either: (1) filed late and within two years of the current bankruptcy; or (2) filed after the commencement of this bankruptcy. These obligations are non-dischargeable under the "Two Year Rule" and the Department requests that language be included within an order of confirmation to clarify as much. 11 U.S.C. §§ 523(a)(1)(B)(ii), 1328(a)(2), *In re Savaria*, 317 B.R. 395 (B.A.P. 9th Cir. 2004). The Department suggests the following:

To the extent that the Arizona Department of Revenue's non-dischargeable liabilities are not paid in full through pro rata distributions under the Debtor's Plan or through direct payments outside of the plan, the unpaid balance along with postpetition and post-confirmation interest shall not be discharged in accordance with 11 U.S.C. §§ 523(a)(1)(B)(ii) and 1328(a).

7. The Department reserves the right to amend, supplement, or withdraw its objection to confirmation.

Conclusion

Any Chapter 13 plan proposed by the Debtor must provide for and eliminate the objections specified herein in order to be reasonable and to comply with applicable provisions of 11 U.S.C. § 1325. Since the Plan, as it is currently proposed, does not comply with 11 U.S.C. § 1325, the Plan cannot be confirmed.

WHEREFORE, the Department prays as follows:

1. That Confirmation of the proposed Chapter 13 Plan be denied, or in the alternative, that the Plan be amended or modified to remedy the Department's objections herein;

1 2. That failure of the Debtor to amend or modify the Plan to conform with the
2 Bankruptcy Code in a reasonable time, that the Court dismiss or convert this case to a Chapter
3 7; and
4

5 3. For such other and further relief as this Court deems proper.

6 RESPECTFULLY SUBMITTED this 15th day of April, 2020.
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8 MARK BRNOVICH
9 Attorney General
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Christopher J. Dylla
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15 *ex rel.* Arizona Department of Revenue
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17 ORIGINAL of the foregoing filed electronically this 15th day of April, 2020 with:
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19 United States Bankruptcy Court
20 District of Arizona
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22 COPY of the foregoing sent by U.S. Mail or by email* this 15th day of April, 2020 to:
23

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38 *Chapter 13 Trustee*

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